

**Correct PTA, Basis Therefore, and Relevant Dates**

2. The '201 Application was filed on September 24, 2001. However, in violation of 35 U.S.C. § 154(b)(1)(A)(i) and 37 C.F.R. § 1.702(a)(1), the Office failed to mail a notice of rejection, objection or requirement, or a notice of allowance by 14 months after the filing date. Instead, a restriction requirement was mailed on July 2, 2003. The Patent Term Adjustment History screen of the PAIR system (attached as Exhibit A) properly indicates a PTO delay of 220 days for this period.
3. A notice of allowance was mailed on August 11, 2004. The issue fee was paid under 35 U.S.C. § 151 on October 5, 2004 (before the deadline of October 11, 2004). However, the Office failed to issue the '721 Patent within the four month time frame allowed under 35 U.S.C. § 154(b)(1)(A)(iv) and 37 C.F.R. § 1.702(a)(4). Instead, the '721 Patent issued on May 10, 2005. The Patent Term Adjustment History screen of the PAIR system properly indicates a PTO delay of 94 days for this period.
4. Patentees are entitled to a total patent term adjustment of 314 days (220 + 94) due to the Patent Office's delay, subject to any reductions.
5. The issue fee was paid by hand delivery of an executed Form PTOL-85B (Fee(s) Transmittal) and a proper Fee Transmittal (Form PTO/SB/17). In addition, 3 revocations of prior powers of attorney (POA) and new POAs were filed by the 3 assignees (Human Genome Sciences, SmithKline Beecham Corporation and the University of Michigan). Copies of these documents, and of the date-stamped return receipt card indicating the receipt thereof by the PTO on October 5, 2005, are attached as Exhibit B.
6. The October 5, 2004 entries in the Patent Term Adjustment History screen of the PAIR system indicate receipt and verification of the issue fee payment, as well as receipt of a "Miscellaneous Incoming Letter". Next to the Miscellaneous Incoming Letter entry the PAIR system shows a reduction of PTA, which is discussed in more detail below. Patentees respectfully submit that this reduction has been made erroneously.

Patent No.: 6,890,721

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Docket No.: PF335D2

**Summary of Relevant Dates**

Application Filed		September 24, 2001
Restriction Requirement		July 2, 2003
Issue Fee Payment		October 5, 2004
Issue Date		May 10, 2005

**Terminal Disclaimer**

7. The instant application is not subject to a terminal disclaimer.

**Efforts to Conclude Processing or Examination**

8. As noted above, the PAIR records indicate a reduction in PTA for this patent, presumably due to an alleged failure to engage in reasonable efforts to conclude prosecution of the application.
9. The reduction for 120 days is shown next to the entry of October 5, 2004 for "Miscellaneous Incoming Letter". The only papers submitted on October 5, 2005 were an executed Form PTO/US-85B (Fee(s) Transmittal), a proper Fee Transmittal (Form PTO/SB/17), and 3 recitations of prior powers or attorney (POA) and new POAs from each of the 3 assignees (Human Genome Sciences, SmithKline Beecham Corporation and the University of Michigan). Copies of these documents, and of the date-stamped return receipt card indicating the receipt thereof by the PTO on October 5, 2005, are attached as Exhibit B.
10. As stated in the M.P.E.P. § 2732 at 2700-21 (Revision 2, May 2004), submission of the types of papers submitted on October 5, 2005 after a Notice of Allowance is not considered a failure to engage in reasonable efforts to conclude processing or examination of an application<sup>1</sup>. Accordingly, Patentees respectfully request that the 120 day reduction in PTA due to papers sent October 5, 2005 be reconsidered and withdrawn.

<sup>1</sup> "The submission of the following papers after a 'Notice of Allowance' is not considered a failure to engage in reasonable efforts to conclude processing or examination of an application (1) Fee(s) Transmittal (PTOL-85B), (2) Power of Attorney; (3) Power to Inspect." See, M.P.E.P. § 2732 at 2700-21 (emphasis in the original).

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11. Other than the circumstance described above, there have been no circumstances as set forth in 37 C.F.R. § 1.701 that could reasonably be construed as a failure to engage in reasonable efforts to conclude processing or examination of this application.
12. Presuming that the above-described reduction currently shown in PAIR was improperly made, the correct PTA should be 314 days.

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**CONCLUSION**

Patentees respectfully request that the PTA for the instant application be reconsidered in light of the facts and circumstances described above. In particular, Patentees maintain that the instant application is entitled to 314 days of PTA.

If any further information is required, please contact the undersigned at the number listed below. Please charge any additional fees due in connection with the filing of this paper, or credit any overpayment, to Deposit Account No. 08-3425.

Respectfully submitted,

Date: July 11, 2005



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